



MEMO OF OPPOSITION

Senate Bill 5390

DBA International is the national nonprofit trade association that represents the interests of companies that purchase performing and nonperforming receivables on the secondary market, including 19 member companies that are headquartered in Michigan. DBA maintains a rigorous code of ethics and a national certification program that promote uniform industry standards of best practice which member companies must comply with in order to maintain membership.

While DBA supports the vast majority of the provisions contained in SB 5390, we have two areas of concern which prompted our Memo in Opposition. If the sponsor would be willing to entertain the following amendments, DBA would be pleased to support SB 5390:

(1) Restore Current Law Concerning Liability (with additional protections for businesses)

Currently, Michigan Court Rule 3.101(S) provides that the employer (i.e. the "garnishee") is liable for the full payment of the judgment when the employer refuses to garnish an employee's wages pursuant to a court judgment. This provision was designed to encourage employer compliance to the court garnishment order.

SB 5390 would change current law to limit employer liability to \$100 or an amount that equals two (2) months of payments on the garnishment, whichever is greater.

The concern DBA has with this statutory change is that while the overwhelming majority of employers comply with court garnishment orders, a small number of companies tend to resist compliance largely because the employee whose wages are to be garnished and the employer who is to perform the wage garnishment are one and the same (i.e. solo practitioners such as doctors, lawyers, electricians, etc.).

This amendment if unchanged would create an apparent loophole, where a professional would be able to ignore the garnishment order against them as the employer and then pay the de minimis liability under their corporate entity. This new liability structure would thereby

effectively allow the solo practitioner (or closely held corporation) to eliminate their responsibility to pay the creditor who received the court ordered garnishment.

While DBA supports the additional protections contained in SB 5390 which safeguards the business community from unreasonable outcomes stemming from an accidental administrative oversight of the garnishment order (i.e. requiring the creditor to serve the employer a notice of failure to garnish an employee's wages and allowing the employer seven (7) calendar days to cure the failure), DBA feels the additional "protection" described above will instead be used as a loophole by solo practitioners looking to avoid paying their contractual obligations.

DBA would recommend the following amendment to close the aforementioned loophole:

(4) A GARNISHEE UNDER A GARNISHMENT OF PERIODIC PAYMENTS THAT FAILS TO TIMELY DISCLOSE AS REQUIRED BY STATUTE OR COURT RULE OR DO ANOTHER ACT AS ORDERED BY THE COURT IS LIABLE FOR THE FULL AMOUNT OF JUDGMENT PROVIDED THAT THE GARNISHEE CAN PETITION THE COURT FOR REASONABLE MONTHLY INSTALLMENT PAYMENTS WHICH SHALL NOT BE UNREASONABLY WITHELD BY THE COURT. ~~FOR AN AMOUNT THAT DOES NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN WITHHELD HAD THE WRIT OF GARNISHMENT BEEN IN EFFECT FOR 60 DAYS OR \$100.00, WHICHEVER IS GREATER.~~ A GARNISHEE MAY RECOVER AN AMOUNT FOR WHICH THE GARNISHEE IS LIABLE UNDER THIS SUBSECTION FROM FUTURE PERIODIC PAYMENTS TO THE DEFENDANT AS PROVIDED IN SECTION 7 OF 1978 PA 390, MCL 408.477.

(2) Garnishment Fee

DBA appreciates that there is an administrative cost borne by the employer to process garnishment orders and that the \$6.00 provided in current paragraph (3) of section 4012 may have not been adjusted in recent years, we nonetheless believe that a 483 percent increase to \$35 is too significant of an increase. DBA believes that a 150 percent increase to \$15 would be more reasonable.

DBA appreciates the opportunity to comment on SB 5390. Please do not hesitate to contact David Reid (DBA's Director of Government Affairs) at dreid@dbainternational.org or (916) 482-2462 should you have any questions concerning DBA's comments.